

REPORT AND ORDER
(Proceeding Terminated)

Before the
Federal Communications Commission
Washington, D.C. 20554

Adopted: March 31, 1993;

Released: April 26, 1993

By the Chief, Allocations Branch:

MM Docket No. 92-228 ✓

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Allouez and Sheboygan Falls,
Wisconsin)¹

RM-8079

RM-8149

FEDERAL COMMUNICATIONS COMMISSION
MAIL SECTION

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¹ The community of Sheboygan Falls has been added to the caption.

² Public Notice of the counterproposal was given on December 29, 1992, Report No. 1922 (RM-8149).

³ Wheeler, licensee of Station WOWN, Channel 257C3, Shawano, Wisconsin, and Midwest, licensee of Station WPKR, Channel 258C2, Waupun, Wisconsin, jointly filed a counterproposal. Wheeler and Midwest's counterproposal included requests for channel substitutions at Shawano, Wisconsin, Oconto, Wisconsin and Escanaba, Michigan. They also requested that the proposed allotment at Allouez, Wisconsin be denied. According to Wheeler and Midwest, Allouez is a suburb of Green Bay, Wisconsin, and instead of providing a first local service, the allotment would add an additional channel to an area that is adequately served by FM and AM radio stations. Wheeler and Midwest stated that Station WOWN, Shawano, on Channel 257C3, is short spaced to Stations WNBZ, Frankfort, Michigan, and WPRK, Waupun, Wisconsin. To eliminate these short spacings, they requested the substitution of Channel 246A for Channel 296A at Oconto, Wisconsin, and modification of the license for Station WOCO-FM, Oconto, accordingly. Further, they propose to substitute Channel 245C for Channel 246C at Escanaba, Michigan, and to modify the license for Station WGLQ, Escanaba, to accommodate Channel 246A at Oconto.

Wheeler and Midwest's counterproposal has not been put on public notice as it is unacceptable for consideration for the following reasons. First, since Stations WOCO-FM, Oconto, and WGLQ, Escanaba, must change channels, they are entitled to reimbursement for the reasonable costs in changing frequencies. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Wheeler and Midwest failed to make a reimbursement commitment in the counterproposal. Second, the allotment of Channel 246A at Oconto would require a site different from the licensed site for Station WOCO-FM, Oconto, and Wheeler and Midwest failed to include a statement from the Station WOCO-FM licensee indicating its consent to a site change. Third, the new site for Station WOCO-FM, Channel 246A, Oconto, is short spaced to Channel 245C at Escanaba which would require that Station WGLQ change transmitter site. It is Commission policy not to require a

1. In response to a petition filed by Michael R. Walton ("Walton"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 6527 (1992), seeking the allotment of Channel 294C3 to Allouez, Wisconsin, as that community's first local broadcast service. Petitioner filed comments supporting the allotment at Allouez. Julian Jetzer d/b/a Sheboygan Falls Broadcasting ("SFB") filed a counterproposal,² as did Wheeler Broadcasting, Inc. ("Wheeler") and Midwest Dimensions, Inc. ("Midwest").³ SFB and Walton filed reply comments.

2. SFB counterproposed the allotment of Channel 294A to Sheboygan Falls, Wisconsin, as that community's first local service. In support of its request, SFB states that Sheboygan Falls is an incorporated community with a population of 5,800, deserving of its first local broadcast service. Further, Sheboygan Falls has a full-time police and fire department, its own school system and weekly news-

station to relocate its transmitter site involuntarily to accommodate a change in another community. See *North Charleston, South Carolina*, 47 FR 10560, March 11, 1982. Furthermore, Wheeler and Midwest's proposal for Channel 245C at Escanaba is short spaced to an application for Channel 244C3 at Algoma, Wisconsin (File No. BPH-9206241C), by 3.8 kilometers (2.4 miles). The application at Algoma is entitled to cut-off protection. See *Conflicts between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. pending*. Although Wheeler and Midwest stated that the licensee of Station WBDK, Algoma has "agreed in principle" to relocate its transmitter, they did not include a consent agreement with the counterproposal. Fourth, Wheeler and Midwest failed to include an affidavit verifying that the statements contained in the proposals were accurate to the best of the counterproponents' knowledge. Section 1.52 of the Commission's Rules states that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). These rules are strictly enforced in allotment rule making proceedings. Since the counterproposal fails to comply with our standard that counterproposals must be technically and procedurally correct at the time of their filing, see *Fort Bragg, California*, 6 FCC Rcd 5817 (1991); *Broken Arrow and Bixby, Oklahoma and Coffeerville, Kansas*, 3 FCC Rcd 6507 (1988), *recon. denied* 4 FCC Rcd 6981 (1989), we will dismiss the counterproposal filed by Wheeler and Midwest. No further consideration of the comments filed in response to the counterproposal will be considered.

paper and has a substantial business district. SFB indicated its intention to file an application for (the channel at Sheboygan Falls.

3. In reply comments, Walton and SFB restated their positions. Walton restated his support of the allotment of Channel 294C3 at Allouez, Wisconsin. In response to the counterproposal filed by SFB, Walton argued that his proposal should be adopted because it will provide service to a greater area and population than would be achieved by a Class A allotment at Sheboygan Falls. According to Walton, a Class C3 channel at Allouez, which has a population of 14,431 people, will cover 4,782 square kilometers, reaching a total population of 279,360, while a Class A channel at Sheboygan Falls, which has a population of 5,823, will cover 2,515 square kilometers and reach a total population of 112,151. SFB restated its support of a channel in Sheboygan Falls and indicated its intention to file an application for Channel 294A if allotted to the community.

4. After consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of Channel 294C3 at Allouez, Wisconsin, and Channel 293A in lieu of Channel 294A at Sheboygan Falls, Wisconsin, as each community's first local broadcast service. Channel 294C3 can be allotted to Allouez consistent with the Commission's spacing requirements provided there is a site restriction 7.2 kilometers (4.4 miles) north of the community.⁴ The site restriction will prevent a short spacing to Channel 293C1, Station WLJY, Marshfield, Wisconsin, and to the construction permit for Channel 240C3, Station WJLW, De Pere, Wisconsin. Channel 294C3 at Allouez is short spaced to Channel 240A, De Pere, Wisconsin. However, Channel 240C3 has been substituted for Channel 240A at De Pere in MM Docket No. 89-292, 6 FCC Rcd 2624 (1991). The grant of a license for Allouez may be withheld until Station WJLW is licensed on the new channel. A staff engineering analysis has determined that Channel 293A can be allotted to Sheboygan Falls in compliance with the separation requirements of Section 73.207 of the Commission's Rules provided there is a site restriction 7.9 kilometers (4.9 miles) east of the community.⁵ The site restriction will prevent a short spacing to Station WLJY, Channel 293C1, Marshfield, Wisconsin.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 7, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Allouez, Wisconsin	294C3
Sheboygan Falls, Wisconsin	293A

6. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Ray L. Wheeler,
Chairman
Wheeler Broadcasting, Inc.
1456 E. Green Bay Street
Shawano, Wisconsin 54166

James R. Coursolle,
President
Midwest Dimensions, Inc.
P.O. Box 3450
Oshkosh, Wisconsin 54903

American Communications
Company
Station WJLW
133 N. Superior Street
De Pere, Wisconsin 54115

7. The window period for filing applications for Channel 294C3 at Allouez, Wisconsin, and Channel 293A at Sheboygan Falls, Wisconsin, will open on **June 8, 1993**, and close on **July 8, 1993**.

8. IT IS FURTHER ORDERED, That the counterproposal filed by Wheeler Broadcasting, Inc. and Midwest Dimensions, Inc. IS DISMISSED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁴ The coordinates for Channel 294C3 at Allouez are 44-30-50 and 88-02-57.

⁵ The coordinates for Channel 293A at Sheboygan Falls are 43-42-44 and 87-42-50.